

REMARKS/ARGUMENTS

Claims 11-12 are pending in the application and stand rejected. By the foregoing amendment, the applicants have amended claim 11. No new matter is added by the amendments. In view of the foregoing amendment and following discussion, the applicants submit that all pending claims are in condition for allowance.

At page 3 of the Office Action, the Examiner rejected claims 11-12 under 35 U.S.C. § 102(e) as being anticipated by Batycky et al. (U.S. 2003/0180283). The applicants have amended claim 11. Batycky et al. teaches “dry particles” in general and points to salmeterol and ipratropium but does not disclose or suggest any of the recited compounds of amended claim 11. Therefore, Batycky et al. fails to include each and every element of the claimed invention. In view of the foregoing, the applicants respectfully submit that amended claim 11 is in condition for allowance. Claim 12 which depends from claim 11 is not anticipated and is also allowable. The applicants respectfully request the Examiner withdraw the rejection.

At page 4 the Examiner rejected claims 11-12 under 35 U.S.C. § 103(a) as being unpatentable over WO 02/089942 (hereinafter, “’942 reference”). The applicants respectfully traverse the rejection. The ‘942 reference does not teach or suggest the recited species of rejected claim 11. The fact that a claimed species or subgenus is encompassed by a prior art genus is not sufficient by itself to establish a *prima facie* case of obviousness. *In re Baird*, 16 F.3d 380, 382 (Fed. Cir. 1994). The ‘942 reference discloses the genus of a number of pharmaceuticals directed to the treatment of several conditions/diseases. The ‘942 reference also discloses some species of each genus, however, it does not provide any guidance or motivation to select the claimed species of rejected claim 11 from the multitude of possible species that are encompassed by each genus of the ‘942 reference (page 12, lines 6-25). Therefore, claim 11 is not obvious over the ‘942 reference and is thus allowable. Claim 12 which depends from claim 11 is also not obvious and is therefore allowable. The applicants respectfully request the Examiner withdraw the rejection.

In view of the foregoing, the applicants submit that claims 11-12 are in condition for allowance. Early and favorable action is earnestly solicited. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

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Respectfully submitted,

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